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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. ~~346~~ 71 - 346

DAVID M. CRAWFORD,

Petitioner,

v.

SECURITIES AND EXCHANGE COMMISSION,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR REHEARING

David M. Crawford, pro se
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PETITION FOR REHEARING

Petitioner respectfully moves this Court for an order vacating its denial of his petition for writ of certiorari, entered on December 20, 1971, and granting the petition. In support of this motion, petitioner joins with Texas Gulf Sulphur Company et al, in Docket Nos. 327, 328, and 347.

I

An Injustice Has Been Done In the Name of Equity

One authority says of rehearings:

> "The standard, perhaps more precisely called ideal, which appears almost everywhere is that rehearing will be granted to avoid doing substantial injustice." 25 FRD 143 at 150

This is such a petition.

Petitioner asks each Justice to put himself in petitioner's place. Believing that news of his company's discovery was in the public domain and that it would be in the public domain for ten hours before his order could be acted upon, petitioner placed an order for his company's stock and for that action in a case of first impression was found to have violated a statute sounding in fraud and deceit and is enjoined for life -- the implication being that unless enjoined he will again violate the law.

The Government has succeeded in obtaining this permanent injunction despite a complete absence of evidence that there was any likelihood of a future violation by petitioner. Indeed there was no meaningful allegation or argument by the Commission that petitioner was likely to violate the law again. If there was no justification for an injunction to deter

petitioner then it is tantamount to punishment. Punishment is what the Commission sought and punishment is what the lower courts decreed.

The lower court proceedings of this case were well attended and extensively reported by representatives of such national newspapers as The New York Times and The Wall Street Journal. They were present when counsel for the Commission cast petitioner and other defendants in the role of criminal types deserving punishment; he said before calling petitioner as his first witness:

> "The Commission's objective in bringing these proceedings before the Court are to drag to light and pillory the misconduct of the individual defendants in these proceedings." (283 Joint Appendix)

Petitioner respectfully asks the Court to recognize that lives of respectable, law-abiding citizens, of which he is one, can be destroyed by interpretations of the securities laws which ensnare the innocent in ways never intended by Congress. Petitioner prays that in this case the Court will seize this opportunity to extend the high standard of interpretation of the securities laws announced in Reliance Electric Company v. Emerson Electric Company 40 LW 4125 decided January 11, 1972.

This Court devotes much time to protecting the rights of individuals in criminal proceedings and similar protection should be accorded the rights of individuals in an equity proceeding under the securities laws. This aspect of petitioner's case merits the Court's review.

II

The Court Has Been Reconstituted

Another substantial ground upon which the Court should grant this petition for a rehearing is the intervening circumstance that the Court has been reconstituted since the petition for certiorari was denied. At that time the Court was at little more than three-quarters strength. Now there are nine Justices, a full bench, to consider this landmark case. Rehearing in American Appellate Courts 25 FRD 143 at 151.

After the petition for certiorari was filed, the need for clarification of this case was attested to by Judge Kaufman who said of the Texas Gulf decision and Judge Waterman:

> "I need not speak at length about his many landmark opinions. His decision in Texas Gulf Sulphur, to take one of many instances, has become the Hadley v. Baxendale of securities law and is cited at length in every securities case that has since come before us -- usually by both sides." (Record of the Association of the Bar of the City of New York, November 1971, p. 659).

A petition based upon a case of this importance merits review and consideration by the full, reconstituted court.

CONCLUSION

For the reasons set forth in this petition for rehearing, as well as in the petition for certiorari previously filed, rehearing and certiorari should now be granted.

Respectfully submitted,

David M. Crawford, pro se
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New York, New York 10017

January 14, 1972

CERTIFICATE OF COUNSEL

I, David M. Crawford, do hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay, and that it is substantially restricted to the grounds specified in Rule 58(2) of the Rules of this Court.

David M. Crawford